

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

**AFFYMETRIX, INC., a Delaware
Corporation,**

Plaintiff/Counter-Defendant,

vs.

**ILLUMINA, INC., a Delaware Corporation,
Defendant/Counter-Plaintiff.**

Civil Action No. 04-901-JJF

**ILLUMINA'S THIRD NOTICE OF DEPOSITION
PURSUANT TO FED. R. CIV. P. 30(b)(6)**

In accordance with the provisions of Rules 26 and 30 of the Federal Rules of Civil Procedure, Illumina, Inc. ("Illumina"), hereby provides notice that commencing at 9:00 a.m. on January 27, 2006, at the offices of KIRKLAND & ELLIS LLP, 555 California Street, San Francisco, CA 94104-1501, or at such other time mutually agreed upon by counsel for the parties, it will take the deposition of Affymetrix, Inc. ("Affymetrix") by oral examination of witness(es) designated by Affymetrix to testify on its behalf as the person(s) most competent to testify concerning the matters listed on attached Attachment A. Pursuant to Federal Rule of Civil Procedure 30(b)(6), the person(s) designated by Affymetrix should be prepared to testify as to such matters known or reasonably available to Affymetrix.

Affymetrix is requested to provide Illumina's counsel, on or before January 20, 2006, a written designation of the names and positions of the officers, directors, managing agents or other persons who are most competent to testify concerning the areas of testimony set forth in Attachment A, and, for each person designated, the matters on which he or she will testify.

The depositions will be taken upon oral examination before an official authorized by law to administer oaths and will continue from day to day until completed. Pursuant to Rule 30(b)(2), testimony of the witness(es) will be recorded by both stenographic means and sound-and-visual means.

You are required to produce the witness(es) at the stated time and place, and are invited to attend to cross-examine.

Dated: December 21, 2005

By: /s/ Mary B. Matterer
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Counsel for Illumina, Inc.

ATTACHMENT A

DEFINITIONS

Illumina hereby incorporates by reference the Definitions as set forth in Illumina's First Set of Requests for Production, Illumina's Second Set of Requests for Production.

AREAS OF TESTIMONY

1. All facts and circumstances relating to any alleged notice of infringement provided to Illumina with respect to any of the Affymetrix Patents.
2. Affymetrix' training of its sales representatives relating to each Affymetrix product that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents.
3. Affymetrix' forecasts or financial planning documents, evaluations or criteria of profitability, profit studies, return-on-investment analyses, or pricing guidelines relating to each Affymetrix product that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents.
4. The identity, number, disposition, sales, revenues, costs, and profits for each component and/or part that are included in each Affymetrix product that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents.
5. Affymetrix' sales accounting and cost accounting records, databases, procedures, and systems.

6. Affymetrix' capacity to manufacture, distribute, supply and/or market those Affymetrix products and/or services that Affymetrix contends practice, embody or incorporate the subject matter described and/or claimed in the Affymetrix Patents.

7. Identity and characteristics of those products and/or services that compete with those Affymetrix products that Affymetrix contends practice, embody or incorporate the subject matter described and/or claimed in the Affymetrix Patents.

8. Allegations by Affymetrix or anyone acting on Affymetrix' behalf that those products and/or services identified in Topic 7 compete with those Affymetrix products that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents.

9. Customer complaints regarding those Affymetrix products and/or services that Affymetrix contends practice, embody or incorporate the subject matter described and/or claimed in the Affymetrix Patents.

10. All facts and circumstances that tend to support any allegation that Affymetrix lowered it prices to compete with Illumina.

11. All facts and circumstances regarding the effect of selling those products that Affymetrix contends embody the Affymetrix Patents on promoting sales of other Affymetrix products.

12. All sales and profits that Affymetrix claims to have lost as a result of the alleged infringement of the Affymetrix Patents by Illumina.

13. All price erosion that Affymetrix claims to have suffered as a result of the alleged infringement of the Affymetrix Patents by Illumina.

14. All facts and circumstances that tend to support any contention that those products that Affymetrix contends embody the Affymetrix Patents are commercially successful.

15. Affymetrix' market share, actual and projected, for each Affymetrix product and/or service that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents, based on units and dollars for the period for which Affymetrix sold product(s) and/or service(s) that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents.

16. Licenses for which Affymetrix has negotiated, whether resulting in an executed license, or not, relating to any Affymetrix product that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents.

17. All royalties and/or other payments made by Affymetrix for the use of intellectual property relating to an Affymetrix product that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents.

18. Affymetrix' knowledge or assertions concerning any of the factors relating to a lost profits analysis that are listed in *Panduit Corp. v. Stahlin Bros. Fibre Works*, 575 F.2d 1152 (6th Cir. 1978).

19. Affymetrix' knowledge or assertions concerning any of the factors relating to a reasonable royalty analysis that are listed in *Georgia Pacific Corp. v. U.S. Plywood Corp.*, 318 F. Supp. 1116 (S.D.N.Y. 1970).

20. The identify, location, and authenticity of documents and other tangible things constituting evidence relating to the categories set forth in topics 1 through 19 above.

21. The identify and location of witnesses knowledgeable about the categories set forth in topics 1 through 19 above.

CERTIFICATE OF SERVICE

The hereby certify that on the 21st day of December, 2005, I caused to be electronically filed the foregoing document, **ILLUMINA'S THIRD NOTICE OF DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6)**, with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Jack B. Blumenfeld, Esq.
MaryEllen Noreika, Esq.
Morris Nichols Arsht & Tunnell
1201 N. Market Street
Wilmington, DE 19899-1347

Additionally, I hereby certify that on the 21st day of December, 2005, the foregoing document was served via facsimile on the following non-registered participants:

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